HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII, Rule 32(2) (b)
Description of the Case

Criminal Misc. Leave Application No. 36 of 2005

Date of decision : 28th February, 2006

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date Initials of Judge.

Note : Bencher Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Leave Application No. 36 of 2005

Naseema
W/o Shri Nishar Ahmad
R/o Jhula Basti, Kotdwar,
District – Pauri Garhwal … Appellant

Versus

1. State of Uttaranchal
2. Smt. Shahjahan W/o Abdul Hameed
3. Abdul Hameed S/o Chunnu
4. Smt. Gaphuran W/o Chunnu
5. Anish S/o Chunnu
6. Rehana S/o Anish
7. Aktar S/o Gainchu
8. Nafeesha W/o Akhtav
9. Abdul Azij S/o Chunnu
10. Jareena W/o Abdul Azij
    All R/o Jhula Basti, Tehsil Kotdwar
    District – Pauri Garhwal … Opp. Parties

Sri Rajendra Singh, learned counsel for the applicants.
Sri Pramod Belwal, learned counsel for respondent Nos. 2 to 10.

Hon'ble J. C. S. Rawat, J.

The present leave to appeal has been filed by the applicant/appellant against the judgment and order dated 16.11.2005 passed by the Judicial Magistrate, 1st Class, Kotdwar, District Pauri Garhwal in Criminal Case No. 259 of 2004.

Brief facts for the disposal of this leave to appeal are that marriage in between Nisar Ahmad and Abdul Hameed was solemnized about one year back according to the customs and rites of the Mohmaden laws. It was alleged by the complainant that her father in law solemnized second marriage and after the solemnization of second marriage of her father-in-law, the step mother-in-law Shahjahan started harassing the appellant and she also demanded the dowry. The other accused also demanded the dowry and tried to harass the appellant cruelly.

When the husband of the complainant, Nisar Ahmad objected the same the accused-respondents cause marpeet upon the complainant and she was turned out from the house and her husband was also beaten by them. It was also alleged that the step mother-in-law was demanding a sum of Rs. 50,000/-. There was an unborn baby in the womb of appellant who died consequently due to the beating of the accused-respondents. A panchayat was called and no decision could be taken in view of the adamant attitude of the respondents. They again demanded dowry of Rs. 50,000/-. The complainant's mother gave a complaint to Kotdwar police and no action was taken by the police and thereafter the complainant moved an application u/s 156 (3) Cr.P.C. which was filed before the Learned Judicial Magistrate, Kotdwar. The learned Magistrate instead of recording the case, registered it as a complaint case. The cognizance was taken and the evidence of the parties were recorded.

The complainant /appellant in support of his case examined Naseema-PW1, Sharifan-PW2 and Nishar Ahmad-PW3. It is also alleged that Sharifan-PW2 is the mother-in-law of the complainant.

Thereafter, the evidence as closed and the accused denied of the allegations made against him. They did not adduce any evidence in support of their case.

Learned Magistrate after hearing the parties, came to the conclusion that the case is not made out against the respondents and they were acquitted accordingly.

Feeling aggrieved by the said order, the present application leave to appeal has been filed.

Learned counsel for the appellant contended that there was sufficient evidence to prove the prosecution story and the Magistrate erred in holding that the prosecution had failed to establish the guilt against the accused. Learned counsel for the respondents refuted the contention.

I have gone through the entire judgment and perused the record available before this court. It is evident from the record available that there is no medical certificate of Nishar Ahmad on record. There is only one medical certificate which is a photocopy of pathology report of Naseema-PW1 and the Doctor has not been produced to prove the said report. There is no injury report on record. It was also stated in the evidence of PW1 that she was not examined in any Govt. hospital. The complainant had only filed a certificate of prescription of medicine which is 4B on record and 15-B is the pathology report of the complainant. Both the reports have not been proved before the court below. The court below was justified in holding that the complainant had failed to establish the injuries of Nissar Ahmad and himself.

Secondly, the complainant and her husband reside separately and other respondents reside in the separate hut. As such, the fact that the complainant and other respondents were residing in the same hut as alleged by the complainant is not established. It is in the evidence that they reside in the separate hut. Thirdly, it is alleged that the step-mother-in-law was demanding a sum of Rs. 50,000/- and other accused were also harassing the complainant. There is no averment when the said amount was demanded by her mother-in-law. It is merely bald and vague statement and it cannot made the basis of conviction. Fourthly, it is alleged that so many peoples gathered at the spot when the marpeet took place. It is alleged that Asgari and Latifan reached at the spot but they were not produced before the court below. Moreover, the name of the said persons had not been alleged in the complaint. Fifthly, it is also in the evidence that the father-in-law of the complainant has second marriage with Shahjahan and he had divorced his first wife who is the mother-in-law of the complainant and there is a dispute between the mother-in-law of the complainant and the father-in-law of the complainant. The trial court was

justified in holding that prosecution evidence is not credible and cogent.

I am completely in agreement with the findings recorded by the trial court and I do not find any substance in the complaint for granting leave in this matter.

Accordingly, the leave to appeal is dismissed.

(J.C.S. RAWAT, J.)

28th February, 2006
Shiv